

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG

Crystal Dawn Roth,

Petitioner,

v.

Civ. Action No. 1:23-CV-56
Crim. Action No. 1:21-CR-46-2
(Kleeh)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 138] AND
DISMISSING § 2255 PETITION [ECF NO. 111]

On July 7, 2023, Crystal Dawn Roth ("Petitioner") through counsel, filed her *Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody* (the "Motion"). [ECF No. 111].¹² The Motion raises a challenge of ineffective assistance of counsel during sentencing. Id.

I. REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï for initial review. On May 6, 2024, the Magistrate Judge filed a Report and Recommendation ("R&R") [ECF No. 138], recommending the Court deny the Motion and dismiss the case with prejudice. Id.

¹ Unless otherwise noted, all docket numbers refer to Criminal Action No. 1:21CR46-2.

² Counsel filed a *Memorandum of Law in Support of Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255* on July 6, 2023. ECF No. 109.

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The R&R also informed the parties regarding their right to file specific written objections to the magistrate judge's report and recommendation. Under Rule 12 of the Local Rules of Prisoner Litigation Procedure of the Northern District of West Virginia, "[a]ny party may object to a magistrate judge's recommended disposition by filing and serving written objections within fourteen (14) calendar days after being served with a copy of the magistrate judge's recommended disposition." LR PL P 12. Therefore, parties had fourteen (14) calendar days from the date of service of the R&R to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection." The R&R further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals."

Objections to the R&R were originally due May 20, 2024. Petitioner, by counsel, moved for an extension to file objections to the R&R [ECF No. 139], which the Court granted on May 21, 2024. ECF No. 140. Accordingly, objections were due on June 20, 2024. Id. However, to date, Petitioner has not filed any objections.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt,

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without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

II. DECISION

Accordingly, after receiving no objections, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 138]. The *Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody* is **DENIED and DISMISSED WITH PREJUDICE** [ECF No. 111].

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record via electronic means.

DATED: July 10, 2024



THOMAS S. KLEE, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA